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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/194,700	03/04/1999	URBAN WIDLUND	000515-141	3507

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EXAMINER

KIDWELL, MICHELLE M

ART UNIT	PAPER NUMBER
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3761

DATE MAILED: 01/24/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

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# Office Action Summary

Application No.

09/194,700

Applicant(s)

WIDLUND, URBAN

Examiner

Michele M. Kidwell

Art Unit

3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on CPA filed 12/14/01.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-8, 10 and 13-16 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8, 10 and 13-16 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 22 June 2000 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Drawings***

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the liquid pervious surface layer constituted of a hydrophilic absorbent material and a hump projecting from a liquid pervious surface layer must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1 – 8, 10 and 13 – 15 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

With respect to claim 1, the applicant has claimed that the liquid pervious surface layer within the wetting region is constituted of hydrophilic absorbent material. However, the specification supports a liquid pervious surface layer (2) with a separate second layer (16) that is hydrophilic. Since the liquid pervious surface layer itself is not hydrophilic, it is unclear what the applicant intends to claim as an invention.

Art Unit: 3761

With reference to claim 2, the applicant claims that a hump projects from the liquid pervious surface layer while the specification and drawings support a hump projecting through the liquid pervious layer. It is unclear what the applicant intends to claim as an invention.

Claim 7 recites the limitation "the same extension" in lines 4 – 5. There is insufficient antecedent basis for these limitations in the claim.

Claim 13 recites the limitation "the forces" and "the ability" in line 3. There is insufficient antecedent basis for these limitations in the claim.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 3, 5 and 16 are rejected under 35 U.S.C. 102(b) as being anticipated by Mesek (US 3,837,343).

With respect to claim 1, Mesek discloses an absorbent article comprising a liquid-pervious surface layer (16), a liquid-impervious surface layer (12) and an absorbent body enclosed between the two surface layers (14) wherein the article further exhibits a wetting region wherein the liquid-pervious surface layer within the wetting region is constituted of hydrophilic absorbent material and remaining

Art Unit: 3761

parts of the liquid-pervious surface layer are constituted of a hydrophobic material as set forth in col. 2, line 11 to col. 3, line 49. The examiner would like to point out while Mesek does not explicitly state that the purpose of the invention is to maintain the mucus membranes of a user moist, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963).

As to claims 3 and 5, Mesek discloses an absorbent article wherein the hydrophilic material in the liquid-pervious surface layer primarily consists of hydrophilic absorbent fibers or hydrophobic fibers through the incorporation of Ruffo et al. (US 3,768,118) in col. 4, lines 51 – 54. Ruffo et al. (hereinafter "Ruffo") discloses the use of hydrophilic, absorbent fibers in col. 10, lines 42 – 61.

Claim 16 is equivalent in scope to claim 1 and is included in the reference of Mesek.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 4, 6 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mesek (US 3,837,343).

With reference to claims 4 and 6, absent of a critical teaching and/or unexpected result, the examiner contends that hydrophilic, absorbent foam material would have been an obvious design choice that does not patentably distinguish the claimed invention from the prior art invention.

Regarding claim 10, it has already been disclosed by the invention of Mesek that the material in the liquid pervious layer is comprised of a hydrophobic material that is rendered hydrophilic as set forth in the abstract. It would then be obvious to one having ordinary skill in the art that the initial hydrophobic material would provide the same results as the hydrophilic material that is rendered hydrophobic since the two materials are functionally equivalent.

Claims 2, 7 -8 and 13 - 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mesek as applied to claims 1, 3, 5 and 16 above, and further in view of Bien et al. (US 5,885,268).

Art Unit: 3761

The difference between Mesek and claim 2 is the provision that the article exhibits a hump projecting from the liquid-pervious surface layer wherein the hump on the article at least partially coincides with the wetting region.

Bien et al. (hereinafter "Bien") teaches an article exhibiting a hump projecting from the liquid pervious surface layer as set forth in figure 5.

It would have been obvious to one of ordinary skill in the art to modify the absorbent article of Mesek to employ a hump in the wetting region because the hump would provide improved contact of the absorbent article with the wearer as taught by Bien in col. 3, lines 36 – 44.

Regarding claim 7, Bien teaches an article wherein the liquid pervious surface layer comprises a laminate of a first liquid-pervious layer, hydrophobic material layer arranged closest to the absorbent body (col. 9, lines 50 – 55) and a second, liquid-pervious, hydrophilic material layer of substantially the same extension as the wetting region of the article, arranged outside the first material layer and intended to bear on the body of the user in the wetting region during use as set forth in col. 8, line 50 to col. 9, line 36 and figure 5.

With reference to claim 8, Bien teaches an article wherein the material is structured as claimed by the applicant and further exhibits an opening, of substantially the same extension as the wetting region of the article, through which the hydrophilic layer is exposed as set forth in col. 8, line 50 to col. 9, line 55. Bien teaches that the hydrophobic material layer may be an apertured plastic film. In this instance, the underlying hydrophilic layer would be exposed.

Art Unit: 3761

As to claim 13, Bien teaches an article comprising a shaping member which, by means of influence from the forces which the article is subjected to during use, has the ability to bring the wetting region into contact with the mucous membranes of the user as set forth in col. 3, lines 45 – 54 and col. 12, line 50 to col. 13, line 6.

With reference to claim 14, absent of a critical teaching and/or unexpected result, the examiner contends that hydrophilic, absorbent foam material would have been an obvious design choice that does not patentably distinguish the claimed invention from the prior art invention.

With respect to claim 15, Bien teaches the shaping member as an insert as set forth in col. 15, lines 11 to col. 16, line 8 and figure 5.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michele M. Kidwell whose telephone number is 703-305-2941. The examiner can normally be reached on Monday thru Friday, 7:00am - 3:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John G. Weiss can be reached on 703-308-2702. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-3590 for regular communications and 703-305-3590 for After Final communications.

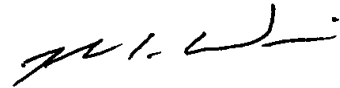


Art Unit: 3761

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0858.

Michele Kidwell

Michele Kidwell  
January 17, 2002



**Attachment for PTO-948 (Rev. 03/01, or earlier)**  
**6/18/01**

**The below text replaces the pre-printed text under the heading, "Information on How to Effect Drawing Changes," on the back of the PTO-948 (Rev. 03/01, or earlier) form.**

**INFORMATION ON HOW TO EFFECT DRAWING CHANGES**

**1. Correction of Informalities -- 37 CFR 1.85**

New corrected drawings must be filed with the changes incorporated therein. Identifying indicia, if provided, should include the title of the invention, inventor's name, and application number, or docket number (if any) if an application number has not been assigned to the application. If this information is provided, it must be placed on the front of each sheet and centered within the top margin. If corrected drawings are required in a Notice of Allowability (PTOL-37), the new drawings **MUST** be filed within the **THREE MONTH** shortened statutory period set for reply in the Notice of Allowability. Extensions of time may **NOT** be obtained under the provisions of 37 CFR 1.136(a) or (b) for filing the corrected drawings after the mailing of a Notice of Allowability. The drawings should be filed as a separate paper with a transmittal letter addressed to the Official Draftsperson.

**2. Corrections other than Informalities Noted by Draftsperson on form PTO-948.**

All changes to the drawings, other than informalities noted by the Draftsperson, **MUST** be made in the same manner as above except that, normally, a highlighted (preferably red ink) sketch of the changes to be incorporated into the new drawings **MUST** be approved by the examiner before the application will be allowed. No changes will be permitted to be made other than correction of informalities, unless the examiner has approved the proposed changes.

**Timing of Corrections**

Applicant is required to submit the drawing corrections within the time period set in the attached Office communication. See 37 CFR 1.85(a).

**Failure to take corrective action within the set period will result in ABANDONMENT of the application.**